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## **SAVE9 - TECHNICAL SERVICES TERMS AND CONDITIONS (VERSION 4.5b – 4th April 2016)**

### **PLEASE READ THIS DOCUMENT CAREFULLY. © COPYRIGHT SAVE9 LIMITED**

We (the Client) wish to engage Save9 Limited in the operative provision of Technical Services, subject to the terms and conditions below. The Client may wish to vary the scope of the Technical Services provided by the Contractor. Any such variations to the scope of the Services provided must be negotiated giving appropriate advance notice. Any adjustment to the fees arising from any variation shall be valued accordingly by the Contractor and submitted to the Client in writing.

### **RECITALS**

The Contractor is in business as a provider of ICT (Information, Communication and Technology) Technical Services with skills and abilities to undertake Technical Services that may be of use to customers such as the Client. The Contractor has agreed to supply and install for the Client separately specified installation services plus associated hardware, software and networking at the Client's site based on the terms and conditions set out herein.

### **NOW IT IS AGREED as follows: -**

### **DEFINITIONS**

1.1 In these terms and conditions the following expressions shall, unless the context otherwise requires, have the following meanings:-

"the Contractor"	Save9, a limited company having its office at Jack Knowles Building (SCC), North Marine Road, Scarborough, North Yorkshire. YO12 7JA;
"the Client"	such person, organisation or company that uses the Services of the Contractor;
"Associate"	any partner, subsidiary, customer, associated or parent company of the Client on whose behalf the Services are provided for;
"Daily Rate"	the daily rate of fees payable by the Client to the Contractor for any work provided by the Contractor at the request of the Client outside the remit of the Services Specification as set out in the Services Specification Form as amended from time to time in accordance with clause 14;
"Hourly Rate"	the hourly rate of fees payable by the Client to the Contractor for any work provided by the Contractor at the request of the Client outside the remit of the Services Specification as set out in the Services Specification Form as amended from time to time in accordance with clause 14;
"Confidential Information"	all information (whether commercial, technical, financial or otherwise) relating to the disclosing party, its customers, clients and suppliers which is designated as being confidential or which by its nature is confidential including, without limitation, all trade secrets, all unpatented designs, drawings, data, specifications, manufacturing processes, testing procedures including all proprietary computer and other machine readable data, logic, logic diagrams, flowcharts, orthographic representations, coding, source or object codes, listings, test data, test routines, diagnostic programs or other material relating to or comprising software;
"Contract", "Agreement" or "Terms and Conditions"	this Contract which includes the recitals and clauses of these terms and conditions and the Services Specification;
"the Documents"	all records, reports, documents, papers, images and other materials or media whatsoever originated by or on behalf of the Contractor for the Client in connection with the provision of the Services;

"Force Majeure"	in relation to either party an event or circumstance beyond the reasonable control of that party (including without limitation any technical failure, industrial dispute of any kind [except where such dispute involves employees of either party to this Contract], civil disturbances, actions or inaction of government or other competent authority, war, earthquakes, fire, lightning, flood, severe weather, vandalism, theft, acts of God or a public enemy, sickness or death of key personnel in each case materially affecting the performance of the Contract);
"Initial Service Period"	the period from the Services Start Date to the Services Renewal Date excluding any Services Extension Period;
"Intellectual Property Rights"	all vested contingent and future intellectual property rights, including, but not limited to copyright, know-how, domain names, database rights patents, design rights, trademarks and service marks (in each case whether registered or not), and any applications for the protection or registration of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created;
"Internet"	that global collection of computers networked to each other with capacity for exchange of information via a common set of rules for exchanging data;
"Technical Services", "Services", "Service Content" or "Service Solution"	the ICT (Information, Communications & Technology) Services covering telecommunications, wireless antenna, network cabling, radio tower infrastructures, mobile data, Internet access, technical support, network appliances, computer hardware, networking, telephony, middleware, software and software maintenance and updates provided by the Contractor to the Client, Associate(s) or end-users, as more particularly described in the Services Specification;
"Licence"	the licence granted to the Client for the Permitted Use of specified Software or Firmware if supplied by the Contractor to the Client pursuant to clause 32;
"Licence Fee"	the fee for the Licence for the use of specified Software or Firmware if supplied by the Contractor to the Client provided under this Contract as set out in the Services Specification Form;
"Licence Period"	the period during which the Client is licensed to deploy specified Software or Firmware provided by the Contractor and which shall be, unless agreed otherwise in writing between the parties, the same period as the Service Period;
"Services Fee"	the fee for the Services set out in the Services Specification Form as amended from time to time in accordance with clause 14;
"Services Specification"	the specification of the Services to be provided by the Contractor to the Client under the Contract set out on the Services Specification Form and as set out in Quotations and Sales Orders provided by the Contractor to the Client;
"the Services Specification Form"	the Contractor's Services Specification Form which sets out the specification of the Services to be provided by the Contractor to the Client under the Contract and which, together with Quotations, Sales Orders and these terms and conditions provided by the Contractor to the Client, forms the Contract between the Contractor and the Client;
"Services Start Date"	the date specified as such in the Services Specification Form;
"Services Renewal Date"	the date specified as such in the Services Specification Form being, unless agreed otherwise in writing between the parties, the first anniversary of the Services Start Date and each subsequent anniversary thereof throughout the duration of this Contract;
"Service Period"	the period during which the Services are provided by the Contractor, including the Initial Service Period and each Services Extension Period;

"Services Extension Period"	each twelve-month period following the Initial Service Period during which Services are provided under the terms of the Contract;
"Software" or "Specified Software"	any Software or firmware licensed to the Client by the Contractor under the provisions of clause 32 of this Contract as described on the Services Specification Form or as otherwise described in writing in a document signed by both parties which refers to this Contract, it being agreed that any such additional Software may be subject to the payment by the Client to the Contractor of an additional licence fee;
"Warranty"	under the provisions of clauses 49 to 55 of this Contract, the Technical Services and supplied equipment and ancillary items provided by the Contractor to the Client are warranted against original defects in material and workmanship for a limited period of 12 months from the date of purchase, when used in accordance with this agreement.

- 1.2 The Client shall be liable to the Contractor for any act or omission or breach of any term of this Contract by any Associate and any reference herein to 'Client' shall, where the context requires, include 'Associate'.
- 1.3 References to clauses are to the clauses of these terms and conditions.
- 1.4 Headings are for convenience only and shall be ignored in interpreting these terms and conditions.
- 1.5 Use of the singular includes the plural and vice versa.
- 1.6 Words referring to the masculine shall include the feminine.

#### PROVISION OF THE SERVICES

2. This Contract shall commence on the Services Start Date and will terminate at the end of the Service Period unless and until terminated in accordance with any of the provisions of clauses 43 to 48.
3. The Contractor agrees to provide Services to the Client and that the Services will be performed by persons possessing suitable skills and experience who will use reasonable skill and care in the performance of the Services.
4. The Contractor may, without notice, vary the technical specification of the Service and/or make technical changes and corrections from time to time provided these do not materially affect the quality or performance of the Services to be provided under this Contract.
5. The Contractor will devote such time and attention to the performance of the Service as, in its reasonable opinion is required. Without prejudice to the foregoing the provision of Support Services will be made during the hours of 9.00am - 5.30pm GMT Mondays to Fridays, except UK Bank Holidays and 25th December to 1st January inclusive. Emergency contact is available outside these hours by prior arrangement at the sole discretion of the Contractor and at the out of hours costs of the Contractor applying at such time.
6. The Contractor may assign or sub-contract any of its rights or obligations, in whole or part, under this Contract. The Client shall not assign any of its rights or obligations, in whole or part, under this Contract without the express prior written consent of the Contractor. The Client may not transfer or attempt to transfer this contract in whole or in part. The Client may not re-sell, rent, lease or otherwise distribute the Technical Service or Service Content (or any part or facility of it) to any other person or organisation without the prior written consent of the Contractor.
7. Where a sub-contractor is used by the Contractor, the Client shall have no contractual, financial or legal relationship with the sub-contractor unless prior written notice of approval is given to the Client by the Contractor. The Client shall have no contractual, financial or legal relationship with an employee or ex-employee of the Contractor unless prior written notice of approval is given to the Client by the Contractor.
8. Unless terminated in accordance with any of clauses 43 to 48 of this Contract the Service will automatically be renewed on the Service Renewal Date. The Contractor agrees to notify the Client of the Service Renewal Date by giving at least 60 days' prior written notice to the Client.

#### FINANCIAL

9. All Services Fee and Licence Fee payments shall be made as set out in the Services Specification Form against an invoice of the Contractor. Services Fees which are payable in instalments shall be set up on a payment in advance basis, unless agreed otherwise in writing. Payment in advance of instalments will enable the Client to receive the Services for the period to which the instalment refers. Where payment is agreed to be by instalments, the Contractor shall not be bound to take any step in performance of the Services until the Client has paid the first instalment and if the Client fails to pay promptly the second or any subsequent instalment, the Contractor shall be entitled (without prejudice to any other remedies or rights) to suspend or terminate the performance of the Service. All payments to be made by the Client to the Contractor under this agreement are exclusive of Value Added Tax which shall be added to the relevant invoice and shall be payable by the Client at the rates and intervals agreed.

10. Unless the Contractor agrees otherwise in writing the Contractor will require the Client to pay by standing order and will ask the Client to sign a standing order form with this agreement. If another payment method is agreed the terms of payment are that any invoices submitted to the Client are payable in full within 30 days from the date of invoice, it may be necessary for the Contractor to pass on to the customer any bank or credit charges that it incurs and/or any administration fee.
11. The Service Fees set out in this agreement are subject to survey prior to installation of the Technical Service. Where, following such survey: -
  - 11.1 in order to meet your requirements the Contractor reasonably considers it appropriate or necessary in the circumstances to provide the Technical Service, wholly or in part, utilising non-standard equipment, more expensive methods or requiring additional work than it normally incurs; or
  - 11.2 at your request, the Service is provided at greater expense by reason of the type of materials used, the duration or the manner of installation, than the Contractor normally incurs;then the Contractor may in addition to the fees set out in this Agreement, determine a supplementary rate of connection or rental fee or both to be payable in relation to the relevant Service.

The Contractor will inform you by notice in writing of such supplementary charges and you may, in a case where Clause 11.1 applies within 7 days of the date of the Contractor's notice, cancel the Service by written notice to the Contractor stating the reason for the termination in accordance with the notice process set out in clause 63 and 64.
12. The Contractor reserves the right to charge at its applicable hourly rate in addition to the agreed fees for all works or goods which are additional to the agreed Services Specification. Whilst the Contractor will endeavour to advise the Client in advance, the Client will be deemed to have authorised all such additions as the Contractor may reasonably consider to be appropriate and in the Client's interests. If the Contractor agrees to fix a fault that is caused by the Client or that otherwise falls outside the responsibility of the Contractor or where no fault is found, the Contractor may charge the Client for any work that the Contractor has undertaken at its applicable Hourly Rate.
13. The Client will provide the Contractor with all the information that the Contractor needs to allow the Contractor to use that information for credit checking and debt collection (including disclosure to and use by third parties acting for the Contractor) and any other uses and disclosures allowed by the Data Protection Act (as amended) and will allow the Contractor to disclose such information to the extent that the Contractor is required to do so by Ofcom, the law or any relevant authority.
14. The Contractor shall be entitled to increase the Services Fees and the Daily Rate or Hourly Rate at each Services Renewal Date by giving the Client at least 30 days prior written notice of such increase and shall be otherwise entitled to increase the Services Fee and the Daily Rate or Hourly Rate at any time, and from time to time by giving the Client not less than 90 days prior written notice where market costs or increased costs resulting from legislation or regulatory requirements cause the Contractor's costs in providing the Services to increase.
15. Subject to any rights the Client may have under this Contract for non-performance of the Services any Services Fees payable in advance are non-refundable and the Client shall not be entitled to any reduction in the Charges in the event that the Client does not use all or any part of the Service.
16. Unless this Contract is terminated in accordance with any of clauses 43 to 48 the Client will be automatically invoiced by the Contractor in accordance with the payment terms of this Contract prior to each Service Renewal. In accordance with clauses 43 to 48 of this Contract if the Client ends the Contract or the Service during the Initial Service Period the Client will pay the Contractor the Termination Charges as set out in the Services Specification Form.
17. Where applicable the Contractor will exercise its statutory right to claim interest and compensation for debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998, as amended.

#### TECHNICAL & EQUIPMENT

18. Client use of the Internet is solely the responsibility of and at the risk of the Client and the Client shall indemnify the Contractor in full against all losses, damages, claims, fines, or expenses (including professional expenses) which may be suffered by the Contractor arising out of any use by the Client of the Internet which breaches any laws, whether national or international, or infringes any rights of or causes liability to arise to any third party.
19. The Contractor: -
  - 19.1 shall contact you to agree suitable dates for the installation of the Technical Service. The Contractor shall attempt to provide and install or procure the provision and installation of the Service at the Client's agreed premises so that the Service can be provided on or before any installation date specified or agreed to by the Contractor. Any installation date given is an estimate only and the Contractor shall not be liable for any failure to meet such installation date;

- 19.2 shall supply the Client with relevant information to enable the Client to suitably prepare the premises for delivery and installation of the equipment. The Client shall at its own expense provide a suitable location, facilities and environmental conditions for the equipment;
- 19.3 shall attempt to comply with the Client's reasonable requests in respect of installation and supplied technical specifications but the Contractor's decision on the routing of cables and wires and the positioning of outlets and the equipment shall be final;
- 19.4 shall use reasonable endeavours to provide the Client with concurrent access to the Service for the duration of the agreement, in accordance with our Service Level Agreement;
- 19.5 will deal with any technical fault that the Client reports to the Contractor's Technical Support Department, where it will be dealt with in accordance with our Service Level Agreement and Warranty;
- 19.6 reserves the right to permanently disconnect any customer apparatus from the Service if the Contractor determines that a technical fault or technical incompatibility exists within the Client's own apparatus or the Client does not fulfil its obligations under clause 20;
- 19.7 does not represent or warrant that the Service will be available without interruption or will be free from error;
- 19.8 does not warrant at any one time such capacity of Service is reserved for the customer;
- 19.9 cannot be responsible for quality of service that the Client receives from the Service;
- 19.10 is not liable for the security of any of the Client's own equipment, software, services or data connected to the Service;
- 19.11 is not liable for any failure to maintain any level of security facilities where this arises from a technical or other failure in the Client's Service;
- 19.12 may occasionally have to interrupt the Service or change the technical specification of the Service for operational or planned maintenance reasons, for upgrades or because of an emergency. Where possible, the Contractor will comply with the notice requirements set out in clauses 63 and 64, however, where this is not possible the Contractor will give the Client as much notice as practically possible of any planned interruption of the Service. In such circumstances, the Client shall have no claim against the Contractor for any such interruption.

20. The Client: -

- 20.1 is solely responsible for ensuring at all times the safekeeping and proper use of the equipment after delivery and installation at the premises. The Client shall be liable to the Contractor for any loss or damage to the equipment (except where it can be shown that such loss or damage was caused by the negligence of the Contractor or due to fair wear and tear within the Warranty period);
- 20.2 will not allow any circumstances to occur or persist that is likely to damage the equipment or detract from or impair its performance or operation and not to add, modify, or in any way interfere with or impair the performance of the equipment;
- 20.3 will ensure the equipment which is situated within the Client's designated premises or within the Client's control is adequately insured and will provide written evidence of such insurance to the Contractor on request;
- 20.4 will not attempt to sell, transfer, dispose of, let, mortgage or charge any equipment supplied by the Contractor unless it is paid for in full - or suffer any distress, seizure or execution to be levied against the equipment or otherwise do anything prejudicial to the Contractor or the owner's rights in the equipment;
- 20.5 is solely responsible for ensuring that any equipment or software that is attached (directly or indirectly) to any equipment supplied by the Contractor to use the Technical Service provided is technically compatible and that they comply with any required approval or standard for such purpose under any relevant documentation, legislation, regulations or telecommunications industry standards;
- 20.6 is solely responsible for providing its own software or communications equipment necessary for the Technical Service provided unless the Services Specification specifies otherwise;
- 20.7 is solely responsible for ensuring that any equipment or software connected to or used with the Service is connected and used in accordance with any relevant legislation, regulations, industry standards, electrical specifications, instructions, health and safety or security procedures applicable to the use of that equipment or software;
- 20.8 hereby grants to the Contractor the right to inspect any equipment, software or cabling connected to or used with the Service to ascertain compliance with this agreement. Without prejudice to any other rights the Contractor may have, unreasonably withholding or delaying consent or access for the purposes of an audit shall entitle the Contractor to suspend the Service;

- 20.9 will pay the cost of delivery in addition to the price of any equipment supplied as part of the Technical Service. The equipment will be accepted when the Client takes delivery of it;
- 20.10 acknowledges that during the installation of the equipment for the provision of the Service the Client may suffer a temporary loss of service and/or interference which shall be reinstated and/or resolved following installation of the equipment without any liability to the Contractor.
21. Items specified as 'rental equipment' that is supplied by the Contractor to the Client shall at all times remain the property of the Contractor or the relevant third party supplier of such equipment notwithstanding that it may be situated on the premises or affixed thereto and you shall at all times make clear to third parties that such equipment is the property of the Contractor or a third party supplier of such equipment.
22. Whilst the Contractor may refer the Client to certain third-party products that appear to work satisfactorily under normal operating conditions the Contractor shall incur no liability for the technical suitability or compatibility of any recommended third-party products to a Client unless they were purchased directly by the Client from the Contractor, in which event the limitation of liability and Warranty provisions of this Contract shall apply.
23. A secure electrical supply that complies with any required legislation, approval or standard is necessary at the Client's premises for the installation, operation and maintenance of the equipment at such points and with such connections as specified by the Contractor. Unless otherwise agreed, this power supply is to be provided by the Client at its own cost. The Contractor shall not be responsible for interruption or failure of the Services caused by any failure of such power supply.

#### LOSS AND CORRUPTION OF DATA OR SOFTWARE

24. It is the sole responsibility of the Client to make regular backups of their electronic data, firmware, settings, applications or files correctly in accordance with good business practise.
25. In the event of data loss or data corruption whilst using the Service the Contractor is not responsible for any fees, expenses, losses or damages incurred as a result of the data loss or data corruption or to take any steps taken to remedy the data loss or data corruption, this being solely the responsibility of the Client or its contractors whom it may employ separately for such purpose.

#### CONFIDENTIALITY

- 26.1 Each party undertakes that it and its directors, employees, appointed consultants, substitutes or hired assistance will at all times (both during the term of this Agreement and after its termination) keep confidential, and will not use (other than strictly for the purposes of this Agreement) and will not without the prior written consent of the other party disclose to any third party any Confidential Information or Document relating to the business of the other party, unless the information: -
- 26.1.1 was public knowledge or already known to the disclosing party at the time of disclosure; or
- 26.1.2 subsequently becomes public knowledge other than by breach of this Agreement; or
- 26.1.3 subsequently comes lawfully into the possession of the disclosing party from a third party.
- 26.2 To the extent necessary to implement the provisions of this Agreement (but not further or otherwise), either party may disclose confidential information relating to the business of the other party to any relevant governmental or other authority or regulatory body, or (where the disclosing party is a corporate body) to any member of the same group of companies, or to any employees of the disclosing party provided that before any such disclosure the Agent shall make those persons aware of its obligations of confidentiality under this Agreement and shall use its best endeavours to obtain a binding undertaking as to confidentiality from all such persons.
27. The obligations of confidence of the parties under this Contract shall survive the expiry of the Contract.
28. At the end of the term of this Contract each party undertakes to the other to deliver to the other or to destroy as directed by the other all Confidential Information and Documents of the other party which it holds at the date of termination of this Contract.

#### INTELLECTUAL PROPERTY AND MATERIALS

29. In the event the Client supplies to the Contractor any information or materials of whatever nature or the Contractor is required by the Client to obtain any such information or materials from a third party in which the Client owns the copyright or any other Intellectual Property Rights the material will be deemed to be supplied to the Contractor under a licence to use such materials for the purposes of provision of the Services. Such licence shall be automatically terminated on termination of this Contract or the Client may, where such materials are made known to the Client by the Contractor as no longer required to enable the Contractor to provide the Services, terminate such licence by notice in writing to the Contractor.
30. In the event the Client supplies to the Contractor any information or materials of whatever nature or the Contractor is required by the Client to obtain any such information or materials from a third party to perform the Services the Client warrants that it has unencumbered ownership of copyright and all other Intellectual Property Rights to licence the Contractor to use, modify, adapt and edit such information or materials in whole or any part thereof.

31. If any claims or legal proceedings are made against the Contractor that any or all of the information or materials referred to in clauses 29 and 30 above are allegedly libellous or infringe the copyright, design, trademark or any other Intellectual Property Rights of any other party the Client shall indemnify in full the Contractor against all losses, damages, costs, fees, expenses (including professional advisers' fees and expenses) and all other disbursements reasonably incurred in connection with any such claims or legal proceedings.

#### SOFTWARE AND FIRMWARE LICENCES

32. The Contractor grants the Client a non-exclusive, non-transferable licence to use any specified Software or Firmware in connection with the Services provided by the Contractor or as otherwise permitted in the Services Specification ("the Permitted Use").
33. The Client acknowledges that any and all of the copyright, trademarks, trade names and any other Intellectual Property Rights created, developed, subsisting or used in connection with any specified Software or Firmware are and shall remain the sole property of the Contractor and the Client shall not during or at any time after the termination of this Contract in any way question the ownership of the Contractor thereof.
34. Any Software or Firmware which is custom developed for the Client by the Contractor is intended for the sole use of the Client in accordance with its agreed specification and the Permitted Use and the Client undertakes that it shall not, unless otherwise agreed in writing by the Contractor, permit any third party to use such Software or Firmware.
35. Upon accepting this Licence the Client undertakes that it will not without the prior written consent of the Contractor: -
- 35.1 use the Software or Firmware in connection with the Service for any purpose other than the Permitted Use;
  - 35.2 copy the Software or Firmware nor to disassemble, decompile or reverse engineer it;
  - 35.3 translate, modify, lease, rent, loan, redistribute, sub-lease, sub-license or create derivative works from it;
  - 35.4 modify, delete or destroy any Software or Firmware residing on any equipment supplied as part of the Service and only to the extent of such consent.
36. Upon accepting this Licence the Client undertakes not to use any Software or Firmware for immoral, illegal or for any other purpose which may be determined threatening, abusive or harmful including but not limited to the creation or transmission of any malware, virus, worms, trojan horse or any other destructive or contaminating program.
37. The Client shall indemnify the Contractor fully against all costs, claims, demands, liabilities, expenses, losses or damages (including legal expenses) suffered as a result of a breach of the Licence by the Client.
38. The Contractor shall defend at its own expense any claim brought against the Client alleging that use of the Software or Firmware infringes the Intellectual Property Rights of a third party ('Intellectual Property Claim') and the Contractor shall pay all costs and damages awarded or agreed to in settlement of an Intellectual Property Claim provided that the Client: -
- 38.1 furnishes the Contractor with prompt written notice of the Intellectual Property Claim;
  - 38.2 provides the Contractor with reasonable assistance in respect of the Intellectual Property Claim;
  - 38.3 gives to the Contractor the sole authority to defend or settle the Intellectual Property Claim.
39. If, in the Contractor's reasonable opinion, the use of the Software or Firmware is or may become the subject of an Intellectual Property Claim then the Contractor shall either: -
- 39.1 obtain for the Client the right to continue using the Software or Firmware which is the subject of the Intellectual Property Claim; or
  - 39.2 replace or, modify the Software or Firmware which is the subject of the Intellectual Property Claim so they become non-infringing.
40. If the remedies set out in clause 39 above are not, in the Contractor's opinion, reasonably available, then the Client shall return the Software or Firmware which is the subject of the Intellectual Property Claim and the Contractor shall refund to the Client the corresponding portion of any paid Licence Fee, as normally depreciated, whereupon this Software Licence or Firmware Licence shall immediately terminate.
41. The Contractor shall have no liability for any Intellectual Property Claim resulting from the use of the Software or Firmware in combination with any incompatible equipment, networking technology or programs or any modification of any item of the Software or Firmware by a party other than the Licensor or its authorised agent.
42. The obligations of the Client under this Licence shall survive the expiry of the Service Period and the Licence Period.

#### TERMINATION, SUSPENSION OR VARIATION OF CONTRACT OR SERVICE

43. This Contract can be terminated by either party with effect from the end of the Initial Services Period or at the end of any Services Extension Period by giving at least 30 days' prior written notice to the other party.
44. A confirmation receipt of notice of termination will be sent by the Contractor in writing to the Client immediately upon receiving a notice of termination from the Client. The Client hereby acknowledges that they will immediately inform the Contractor by email or letter if a confirmation receipt of the notice of termination is not received from the Contractor within three working days of the Client issuing a notice of termination. Both parties hereby

acknowledge that any contractual termination either partially or wholly is not considered effective until the Contractor confirms receipt of the Client's notice of termination in writing to the Client.

45. The Contractor may, at its sole discretion and upon giving the Client written notice, terminate the Contract forthwith if: -
- 45.1 the Client commits any serious breach of any term of this Contract and (in the case of a breach capable of being remedied) shall have failed, within 14 days after the receipt of a request in writing from the Contractor to do so, to remedy the breach (such request to contain a warning of the Contractor's intention to terminate); or
  - 45.2 the Client convenes any meeting of creditors or passes a resolution for winding up or suffers a petition for winding up or has an administrative receiver or receiver appointed over the whole or part of its assets or suffers the appointment of an administrator or goes into liquidation.
46. The Client agrees to use the Technical Service for lawful purposes only and the Contractor shall be entitled (without prejudice to any other remedies or rights) to suspend or terminate the performance of the Service if it is used: -
- 46.1 fraudulently or in connection with a criminal offence;
  - 46.2 to present, send, receive, upload, download, use or re-use any material which is offensive, abusive, indecent, defamatory or obscene;
  - 46.3 in a manner which infringes upon the legal rights of any third party;
  - 46.4 to cause annoyance, inconvenience or needless anxiety;
  - 46.5 to promote or incite illegal activities in any jurisdiction.
47. Any termination of the License or this Contract (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision in this Contract which is expressly or by implication intended to come into or continue in force on or after such termination. If suspension of the Service occurs for technical reasons or to prevent third party fraud and that suspension lasts for more than a continuous period of 24 hours, the Contractor will credit against the next due regular payment for the whole period of the suspension the relevant proportion of any amount credited to the Contractor by their own service provider in full and final satisfaction of the Contractor's liability for such suspension. The Client shall reimburse the Contractor for all reasonable costs and expenses incurred as a result of the suspension and any recommencement or variation of the Service where suspension or variation is implemented as a result of any act or omission of the Client.
48. The Contractor may, at its sole discretion and upon giving the Client written notice, suspend or vary the Service in place at specific Client sites forthwith without compensation for any period during which: -
- 46.1 the Contractor is obliged or requested to comply with an order or instruction of, or a recommendation or request to take such action received from the government, Ofcom, an emergency services organisation or a competent administrative authority; or
  - 46.2 the Contractor reasonably suspects or believes that the Client is in breach of clauses 9 to 17, 20.1 to 20.8 or 35; or
  - 46.3 the Client's credit rating decreases at any time, and the Client fails to supply reasonable security in response to a request from the Contractor; or
  - 46.4 it is desirable because of external technical problems or work on the Service or for reasons of safety; or
  - 46.5 the Contractor's own service provider suspends its agreement with the Contractor.

#### WARRANTY AND LIABILITY

49. The Contractor warrants that it shall exercise reasonable care and skill in the provision of the Technical Services but makes no warranties, express or implied, regarding the accuracy or completeness of the Services or the results to be obtained there from and the Contractor will not be liable for any action taken in reliance on the Service.
50. The Client is solely responsible for evaluating the accuracy and completeness of any data or information transmitted through the Service.
51. The Contractor will not be a party to or in any way responsible for any Client transaction concerning third party goods and services.
52. The Contractor accepts unlimited liability for death or personal injury resulting from its negligence.
53. Save in respect of claims for death or personal injury as referred to in clause 52 above all liability that is not expressly assumed in this Contract is excluded and the Contractor shall not be liable in contract, tort or otherwise for any indirect or consequential loss or damage to business, loss of profits, loss of revenue or income, increased costs of operation, damage to goodwill or reputation, loss of data or loss of anticipated savings sustained by the Client or by any users arising from use of the Services (including for the avoidance of doubt any such losses arising in connection with any failure of performance, error, omission, interruption, defect, delay in operation or transmission, computer virus or malware [which shall include Trojans, Worms and Malicious code], line failure, or system failure), even where such losses or damages were reasonably foreseeable or actually foreseen and even if the Contractor is advised of the possibility of such losses or damages arising. For the purposes of this clause, the 'Contractor' includes its employees, sub-contractors and suppliers who shall have the benefit of the limits and exclusions of liability set out above in terms of the Contracts (Rights of Third Parties) Act 1999.



54. The Contractor's maximum liability to the Client for direct losses, under this Contract shall be limited to the combined sum of the Licence Fee and annual Services Fee paid to the Contractor by the Client in the 12 months preceding the date of the claim except:-
- 54.1 as provided in clause 52; and
  - 54.2 the Contractor accepts liability for loss or damage to the Client's physical property arising from its negligence, up to £1 million in any 12 month period.
55. The Contractor cannot guarantee that the Service will never be faulty. However, the Contractor accepts liability if it is late in repairing a Service Failure as set out in the Service Level Agreement. In these circumstances the Client is entitled to rental refunds for any whole or part day, that there is a Service Failure.

#### FORCE MAJEURE

56. Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party. If such circumstances continue for a continuous period of more than 1 month, either party may terminate this Agreement by written notice to the other party.

#### LEGAL ADVICE AND OTHER MATTERS

57. The Client confirms that it has had an opportunity to take independent legal advice before agreeing to these terms and conditions.
58. This Contract supersedes all prior agreements, arrangements, and undertakings between the parties and constitutes the entire Agreement between the parties relating to the subject matter of this Contract.
59. This Contract shall not be varied or modified in any way except in writing, signed by an authorised representative of each of the parties.
60. The Client will comply with all applicable directives, legislation, regulations, codes of practice, instructions or guidelines issued by regulatory authorities insofar as these may relate to the use of the Service.
61. The Client must inform the Contractor immediately if anyone makes or threatens to make any claim or issue legal proceedings against the Client relating to the Service and the Client will, at the Contractor's request, immediately stop the act or acts complained of. If requested by the Contractor, the Client agrees to confirm the details of any claim relating to the Service in writing immediately. The Client shall indemnify the Contractor in full against all losses, damages, claims, fines, or expenses (including professional expenses) which may be suffered by the Contractor arising out of any failure of the Client to comply with requests made by the Contractor under this clause.

#### SEVERABILITY

62. If any term or condition of this Contract is declared by a court or tribunal of competent jurisdiction to be unlawful, void, or for any reason unenforceable, then that term or condition shall, to the extent required, be severed from this Contract and rendered ineffective as far as possible without modifying the remaining provisions of this Contract and shall not in any way affect the validity and enforceability of the remaining terms or conditions.

#### NOTICES

63. All notices under this Contract shall be given in writing and in English.
64. Notices shall be deemed to have been duly given: -
- 64.1 when delivered, if delivered by courier or other messenger (including registered mail) during the normal office hours of the recipient; or
  - 64.2 when sent, if transmitted by e-mail and a successful return receipt is generated; or
  - 64.3 on the second business day following mailing, if mailed by first class post;
- in each case addressed to the most recent address or e-mail address notified to the other party.

#### WAIVER

65. Any delay by the Contractor in enforcing the provisions of this Contract shall not prejudice or restrict its rights and any waiver of rights by the Contractor shall not operate as a waiver of its rights in relation to any subsequent breach by the Client.

#### THIRD PARTIES

66. Except as expressly provided in this Contract none of its terms and conditions shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
67. Without prejudice to the provisions of clause 66 if the Contractor receives a complaint from a third party to the effect that its legal rights have been infringed due to the use by the Client of the Service then the Contractor will in the first instance notify the Client. A written copy of the complaint will be requested from the complainant by

the Contractor. If the complaint cannot be resolved in the first instance then an authorised representative of the Client will be notified. The Contractor reserves the right to temporarily suspend the Service until an outstanding third party complaint of this nature is satisfactorily resolved.

#### COMPLAINTS AND DISPUTE PROCEDURE

- 68. In the event of any complaint arising from the Client with respect to the Service the Client will in the first instance notify the Contractor's Customer Services. If this does not resolve the complaint then the Client should notify the Company Secretary of the Contractor.
- 69. Any dispute which may arise between the parties concerning this Contract shall be determined as follows: -
  - 69.1 If the dispute shall be of a technical nature relating to functions or capabilities of the Service or any similar or related matter then such dispute, if it cannot be resolved under the procedures set out in clause 68 or where those procedures are not relevant to the dispute, shall be referred for final settlement by the relevant Ofcom approved Alternative Dispute Resolution (ADR) scheme or failing such referral within 14 days of either party's request to the other therefore nominate at the request of either party by the President for the time being of the British Computer Society or his authorised designate. Such an expert shall be deemed to act as an expert and not an arbitrator. The decision of the expert shall (in the absence of clerical or manifest error) be final and binding on the parties and the involved costs shall be borne between the parties equally unless he determines that the conduct of either party is such that such party should bear all of the costs.
  - 69.2 In any other case the parties shall irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the purposes of hearing and determining any dispute arising out of this Contract.

#### GOVERNING LAW

- 70. This Contract is governed by the laws of England.
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